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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,037	09/30/2003	Alan K. Uke	023727-2201	6671
30542	7590	01/06/2006		EXAMINER
FOLEY & LARDNER LLP P.O. BOX 80278 SAN DIEGO, CA 92138-0278			CRANSON JR, JAMES W	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/678,037	UKE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	James W. Cranson	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 December 2005.  
 2a) This action is FINAL.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-73 is/are pending in the application.  
 4a) Of the above claim(s) 53-59 and 73 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,6,9-14,16,17,22-27,31-36,60-63 and 67-70 is/are rejected.  
 7) Claim(s) 2-5,7,8,15,18-21,28-30,37-52,64-66,71 and 72 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 26APRIL2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____. _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### **Response to amendment**

Applicant canceled claims 53-59 and 73 in the amendment filed 12/8/2005.

#### ***Response to Arguments***

Applicant's arguments, see remarks, filed 12/08/2008, with respect to the rejection(s) of claim(s) 1-73 under obviousness-type double patenting in view of US 6,283,610 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. Also the 102 (b) rejection has been withdrawn. However, upon further consideration, a new ground of obviousness-type double patenting rejection is made in view of US 6,012,824 to Sharrah et al. and a new 102(b) is made.

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 6, 9-14, 16, 17, 22-27, 31-36, 60-63 and 67-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of

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US 6,955,446 in view of US 6,012,824 to Sharrah et al. Although the conflicting claims are not identical, they are not patentably distinct from each other.

The subject matter claimed in the instant application is fully disclosed in the referenced patent and would be covered by any patent granted on that patent since the referenced patent and the instant application are claiming common subject matter, as follows: Claims 1, 6, 9-14, 17, 22- 27, 31-36,60-63 and 67-70 of the instant application recite essentially the same combinations of features/limitations recited in claims 1-37 of US 6,955,446 except that a rotatable head and a flattened battery housing are not disclosed.

Regarding claim 1:

Independent claim 1 of the instant application recites, *inter alia*, "flashlight comprising, battery housing, front and rear end, first and second rows of batteries side by side, a pivot contact at interior of rear end for connection between batteries, a rotatable head,electrical connections to light source" while independent claim 1 of the US 6,955,446 patent recites, *inter alia*, "flashlight comprising, battery housing, front and rear end, first and second rows of batteries side by side, a pivot contact at interior of rear end for connection between batteries ,electrical connections, and light source assembly.

US 6,012,824 to Sharrah et al.teaches the use of a rotatable head in a flashlight. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide US 6,955,466 with a rotatable head as taught by Sharrah. The purposes as well known in the

illumination art are to provide lighting versatility and flexibility afforded by a rotatable head.. US 6,955,446, as modified by Sharrah does not have a flattened cross-section battery housing.

It would have been obvious to one of ordinary at the time of the invention to provide US 6,955,446 as modified by Sharrah with a flattened cross-section battery housing because it has been held that lacking any critically, changing the form or shape of prior art parts does not make the claimed invention patentable over that prior art (In re Dailey, 149 USPQ 47).

Minor semantic differences aside, the combinations of features/limitations in claim 1 of the instant application are functionally equivalent to the combinations of features/limitations in claim 1 of the US 6,955,446 patent as modified above by Sharrah and (In re Dailey, 149 USPQ 47).

Regarding claims 6,9-14 and 17 all according to claim 1:

Regarding claim 6, claim 1 of US 6,955,446 patent discloses pivot contact off-center.

Regarding claim 9, claims 21 and 30 of US 6,955,446 patent disclose battery polarizer so that only the correct orientation of batteries will energize light source.

Regarding claim 10, claim 6 of US 6,955,446 patent discloses gas vent that vents housing gas.

Regarding claim 11, claim 7 of US 6,955,446 patent discloses adapted for use in hazards.

Regarding claim 12, claim 8 of US 6,955,446 patent discloses that flashlight is waterproof.

Regarding claim 13, claim 9 of US 6,955,446 patent discloses passes the UL 30 foot drop.

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Regarding claim 16, claim 16 of US 6,955,446 patent discloses that pivot contact comprises a curved pivot surface on the back of said contact.

Regarding claim 17, claim 16 of US 6,955,446 patent discloses that pivot contact presses against inside rear of said end housing when flashlight is closed with batteries in place.

Independent claim 22 of the instant application recites, *inter alia*, "flashlight comprising, battery housing, front and rear end, first and second rows of batteries side by side, a rotatable head, electrical connections to light source" while independent claim 1 of the US 6,955,446 recites, *inter alia*, "flashlight comprising, battery housing, front and rear end, first and second rows of batteries side by side, electrical connections, and light source assembly. Minor semantic differences aside, the combinations of features/limitations in claim 1 of the instant application are functionally equivalent to the combinations of features/limitations in claim 1 of the US 6,955,466 patent as modified above by Sharrah and (*In re Dailey*, 149 USPQ 47).

Regarding claim 23, according to claim 22, US 6,955,466 as modified above by Sharrah discloses and illustrates removal of head for insertion of batteries.

Regarding claim 24, according to claim 22, US 6,955,466 as modified above by Sharrah discloses and illustrates that rotatable head is free of protrusions

Regarding claim 25, according to claim 22, US 6,955,466 as modified above by Sharrah discloses and illustrates that housing is generally cylindrical along long axis.

Regarding claim 31, according to claim 22, claims 21 and 30 of US 6,955,466 disclose battery polarizer so that only the correct orientation of batteries will energize light source.

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Regarding claim 32, according to claim 22, claim 6 of US 6,955,466 discloses gas vent that vents housing gas.

Regarding claim 33, according to claim 22, claim 7 of US 6,955,466 discloses adapted for use in hazards.

Regarding claim 34, according to claim 22, claim 8 of US 6,955,466 discloses that flashlight is waterproof.

Regarding claim 35, according to claim 22, claim 9 of US 6,955,466 discloses passes the UL 30 foot drop.

Regarding claim 36, according to claim 22, claim 36 of US 6,955,466 discloses head is threaded to housing at housing connection.

Regarding claim 41, according to claim 32, claim 9 of US 6,955,466 discloses arm of pivot contact presses against inside rear end with batteries in place.

Independent claim 60 of the instant application recites, *inter alia*, "flashlight comprising, battery housing, flattened cross-section, front and rear end, first and second rows of batteries side by side, a rotatable head, electrical connections to light source" while independent claim 1 of the US 6,955,446 patent recites, *inter alia*, "flashlight comprising, battery housing, front and rear end, first and second rows of batteries side by side, electrical connections, and light source assembly. Minor semantic differences aside, the combinations of features/limitations in claim 1 of the instant application are functionally equivalent to the combinations of features/limitations

in claim 1 of the US 6,955,446 patent as modified above by Sharrah and (*In re Dailey*, 149 USPQ 47).

Regarding claim 61, according to claim 60, examiner takes Official Notice that is well known to have housing openable at rear end for insertion of batteries.

Regarding claim 62, according to claim 60, US 6,955,446 patent as modified above by Sharrah discloses and illustrates removal of head for insertion of batteries.

Regarding claim 63, according to claim 60, claim 1 of US 6,955,446 patent has the same pivot limitation.

Independent claim 67 of the instant application recites, *inter alia*, "rotatable flashlight head comprising body adapted for attachment to battery housing, batteries electrically connections to light source" while independent claim 1 of the US 6,955,446 patent has the same structure as noted above.

Regarding claim 68, according to claim 67, examiner takes Official Notice that is well known to have housing threaded for the purpose of attachment.

Regarding claim 69 according to claim 67, US 6,955,446 patent discloses light source assembly.

Regarding claim 70, according to claim 67, US 6,955,446 patent as modified above by Sharrah discloses and illustrates a threaded end portion for attachment.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22-25,67,69 and 70 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 6,012,824 to Sharrah.

Sharrah discloses a flashlight with rotatable head and threaded connection mechanism .

Regarding claims 22 and 67:

A flashlight (10) comprising a battery housing (20) comprising a front end and a rear end (figure 1 );  
a rotatable head (200) comprising a circular housing connection (figure 2), wherein said housing connection is attached  
to said housing at said front end and is replaceably removable at said housing connection (figure 2) to allow insertion of  
batteries, said rotatable head bears a light source assembly (285,286,)oriented at 90.+-.30  
degrees to the long axis ( not labeled )of said battery housing, and said rotatable head  
is rotatable about said long axis; electrical connections for providing electrical power from said  
batteries (figures 2-5)  
to a light source in said light source assembly.

Regarding claim 23, according to claim 22;

Sharrah discloses and illustrates removal of rotatable head allows insertion of batteries.

Regarding claim 24, according to claim 22;

Sharrah discloses and illustrates that rotatable head is free of protrusions.

Regarding claim 25, according to claim 22;

Sharrah discloses and illustrates that housing is generally cylindrical along long axis.

Regarding claim 68, according to claim 67, examiner takes Official Notice that is well known to have housing threaded for the purpose of attachment.

Regarding claim 69 according to claim 67, Sharrah discloses light source assembly.

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Regarding claim 70, according to claim 67, Sharrah discloses and illustrates a threaded end portion for attachment.

***Allowable Subject Matter***

Claims 2-5,7,8,15,18-21,28-30, 37-52,64-66, 71 and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Claims 2-5,7,8,15,18-21,28-30 include limitations of bezel, seat belt cutter, glass breaker and other limitations that but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

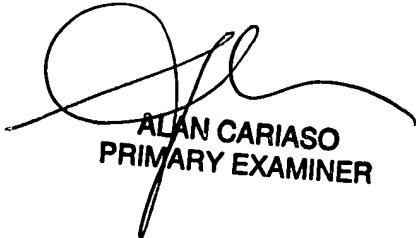
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Cranson whose telephone number is 571-272-2368. The examiner can normally be reached on Mon-Fri 8:30A.M.- 5:00P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandy O`Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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PRIMARY EXAMINER